



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

June 5, 2024
SPR24/1557

John J. Ferriter, Esq.
Holyoke Gas & Electric Department
99 Suffolk Street
Holyoke, MA 01040

Dear Attorney Ferriter:

I have received the petition of Jonathan Gerhardson appealing the response of the Holyoke Gas & Electric Department (Department/City) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On May 9, 2024, Mr. Gerhardson requested:

- [1] Warrants, subpoenas, or other requests for logs of internet traffic, its metadata, or other information generated through the use of Holyoke Gas & Electric as an internet service provider from any person, agency, or other source made between May 1 2023 and May 1 2024. (Please exclude any self-requesters; i.e. a customer requesting a copy of their own internet traffic.)
- [2] All communications between Holyoke Gas & Electric and the requestors of this information.

The Department provided a response on May 13, 2024. Unsatisfied with the Department's response, Mr. Gerhardson appealed, and this case, SPR24/1557, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist.

Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

The Department's May 13th Response

In its May 13, 2024 response, the Department states it found no responsive records to Mr. Gerhardson's request.

Current Appeal

In his appeal petition, Mr. Gerhardson states that another municipal light department was "served at least 3 subpoenas in the past year," and he contends "that Holyoke is unlikely to not be in possession of any records responsive to [his] request."

Records in Existence

The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Additionally, under the Public Records Law, a public employee is not required to answer questions, or do research, or create documents in response to questions. See G. L. c. 66, § 10(a); 32 Op. Att'y Gen. 157, 165 (May 18, 1977). Further, in accordance with the Public Records Law, custodians are expected to use their superior knowledge of the records in their custody to assist requestors in obtaining the desired information. See 950 C.M.R. 32.04(5).

In an email to this office on May 29, 2024, the Department confirmed that it has no records responsive to the request, and explains that "the City thoroughly searched all files for all documents requested and no responsive documents were discovered, apart from the recent emails send by and to the requestor. No documents are being withheld under any exemption."

Conclusion

Where the Department confirmed that it does not possess records responsive to Mr. Gerhardson's request, I will now consider this administrative appeal closed. If Mr. Gerhardson is not satisfied with the resolution of this administrative appeal, please be advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G. L. c. 66, §§ 10(b)(ix), 10A(c) (pursuing administrative appeal does not limit availability of judicial remedies).

John J. Ferriter, Esq.
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Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur".

Manza Arthur
Supervisor of Records

cc: Jonathan Gerhardson